

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

-----X
ROBERT MORGAN,

Plaintiff

17 Civ.

v.

JURY TRIAL REQUESTED

PORT AUTHORITY TRANS HUDSON CORP,

Defendant

-----X

COMPLAINT

Plaintiff, by his attorneys, Flynn & Wietzke, PC, complains of the Defendant and alleges:

THE PARTIES

1. The plaintiff is a resident of the State of New York, County of Bronx, and City of New York.

2. The defendant Port Authority Trans Hudson Corp (“PATH”) is a railroad carrier corporation providing railroad transportation, in interstate commerce by rail and operates a railroad system and railroad yards within the jurisdiction of this Court and in various other States, with a usual place of business in New York and New Jersey.

3. Prior to May 31, 2014, and at all times hereinafter mentioned, the defendant employed the plaintiff as a power railman under its direction, supervision and control and in furtherance of defendant’s business in interstate commerce.

4. Prior to May 31, 2014 and at all times hereinafter mentioned, at the direction of and for the benefit of PATH, plaintiff was a passenger in a company vehicle stopped in traffic on Cape May Street near intersection with Fifth Street in Harrison, New Jersey.

5. Prior to December 5, 2015, and at all times hereinafter mentioned, the defendant employed the plaintiff as a power railman under its direction, supervision and control and in furtherance of defendant’s business in interstate commerce.

6. Prior to December 5, 2015 and at all times hereinafter mentioned, the defendant maintained, operated and controlled the right of way near G7 Alpha Track on west end of Kearney Yard in Kearney, New Jersey which contained defendant's tracks, rails, switches, sidings, roadbeds and appurtenances thereto, over, through and upon which the defendant operated engines, trains and cars under its control and direction.

7. During all times herein mentioned, the defendant was and is engaged in interstate commerce by providing railroad transportation among multiple states.

JURISDICTION AND VENUE

8. The plaintiff brings the First Cause of Action against the defendant for violation of the Federal Employers' liability Act, 45 U.S.C. §51 et seq. (FELA).

9. This Court has subject matter jurisdiction in this case pursuant to 45 U.S.C. §56.

10. Venue is proper in this District because a substantial part of the events or omissions giving rise to the claim occurred in this District, because defendant resides in this District and/or because defendant does business in this District.

FACTS

11. At the time of the defendant's FELA violations, the plaintiff was employed by the defendant and qualified as an employee within the meaning of 45 U.S.C. § 51.

12. On May 31, 2014, the plaintiff was working as a power railman when, at the direction and training of defendant, at the direction of and for the benefit of defendant, plaintiff was a passenger in a company vehicle stopped in traffic on Cape May Street near intersection with Fifth Street in Harrison, New Jersey that was struck by another vehicle backing up into the front of the company vehicle.

13. Prior to the impact, the driver of the company vehicle attempted to sound the horn of the company truck to no avail – the horn did not work.

14. Plaintiff was caused to be thrown back and forth in the company truck causing him to suffer injuries to his back, neck, leg and foot.

15. Defendant's conduct, more specifically set forth below, caused, in whole or in part, the plaintiff to suffer various physical, psychological and economic harms.

16. Plaintiff's injuries include, but are not limited to, C6/C7 radiculitis; L5/S1 radiculitis; cervicogenic headaches; cervical whiplash syndrome; low back pain.

17. On December 5, 2015, the plaintiff was working as a power railman when, at the direction and training of defendant, he was crossing the right of way with a contractor when he stepped into an open box of a switch panel causing him to fall forward.

18. Plaintiff was caused to fall forward striking his knee and landing on the ground causing him to suffer injuries to both knees.

19. Defendant's conduct, more specifically set forth below, caused, in whole or in part, the plaintiff to suffer various physical, psychological and economic harms.

20. Plaintiff's injuries include, but are not limited to, a 7mm osteochondral injury at the medial trochlear condylar junction with cartilage thinning and cartilaginous loose bodies; mild synovial hypertrophy in small joint effusion; and focal radial tear of the lateral meniscus.

COUNT I
Violation of FELA-May 2014

21. The plaintiff adopts by reference and realleges each and every allegation set forth in the foregoing paragraphs of this Complaint with the same force and effect as if set forth under this cause of action.

22. This Cause of Action is brought under the Federal Employers' Liability Act, (45 U.S.C. Sec. 51 et seq.).

23. On or about May 31, 2014, while the plaintiff, an employee of the defendant, was in the performance of his duties as a power railman Cap May Street in Harrison, New Jersey, the defendant, its agents, servants and employees, so negligently and carelessly conducted themselves toward the plaintiff:

- a. in failing to provide plaintiff with a reasonably safe place to work;
- b. in failing to provide operational warning devices;
- c. in provided equipment unsafe for the use for which it was intended;
- d. in providing equipment which did not meet minimum safety standards for roadworthiness;
- e. in failing to properly inspect its company trucks;
- f. in failing to fix and/or repair the airbags;
- g. in failing to fix and/or repair the horn;
- h. in failing to maintain plaintiff's work place; and, so negligently failed and neglected to enact and enforce safety rules, regulations, procedures, and practices for activities carried out by its personnel at the said place, that all of the foregoing brought about severe and disabling injuries to plaintiff, as set forth above.

24. The relevant injuries occurred while the plaintiff was acting in the furtherance of interstate commerce or in work closely or substantially affecting the same.

25. The plaintiff was damaged thereby in the sum of \$250,000.00.

COUNT II
Violation of FELA-December 2015

26. The plaintiff adopts by reference and realleges each and every allegation set forth in the foregoing paragraphs of this Complaint with the same force and effect as if set forth under this cause of action.

27. This Cause of Action is brought under the Federal Employers' Liability Act, (45 U.S.C. Sec. 51 et seq.).

28. On or about December 5, 2015, while the plaintiff, an employee of the defendant, was in the performance of his duties as a power railman along the right of way near Kearney Yard in

Kearney, New Jersey, the defendant, its agents, servants and employees, so negligently and carelessly conducted themselves toward the plaintiff:

- a. in failing to provide plaintiff with a reasonably safe place to work;
- b. in failing to warn plaintiff of defective switch panel;
- c. in failing to cordon off the open switch panel;
- d. in failing to maintain its rails;
- e. in failing to properly inspect its rails;
- f. in failing to fix and/or repair switch panel;
- g. in failing to maintain plaintiff's work place; and, so negligently failed and neglected to enact and enforce safety rules, regulations, procedures, and practices for activities carried out by its personnel at the said place, that all of the foregoing brought about severe and disabling injuries to plaintiff, as set forth above.

29. The relevant injuries occurred while the plaintiff was acting in the furtherance of interstate commerce or in work closely or substantially affecting the same.

30. The plaintiff was damaged thereby in the sum of \$250,000.00

WHEREFORE, plaintiff demands judgment against the defendant on Count I in the sum of TWO HUNDRED FIFTY THOUSAND (\$250,000.00) DOLLARS; and, plaintiff demands judgment against the defendant on Count II in the sum of TWO HUNDRED FIFTY THOUSAND (\$250,000.00) DOLLARS; together with the costs and disbursements of this action.

Respectfully submitted

By: 

MARC WIETZKE

FLYNN & WIETZKE, PC

1205 Franklin Avenue

Garden City, NY 11530

Tel.: (516) 877-1234

E-mail: MWietzke@felaattorney.com